

United States District Court

DISTRICT OF OREGON

In the Matter of the Search of

The residence, outbuildings, and curtilage at the following locations:
**1703 Foster Street, Warm Springs Indian Reservation,
District of Oregon 97761**

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

FILED 08 AUG 18 2008 USDC ORP

CASE NUMBER: 08 MS 480

I, Leonard Opanashuk, being duly sworn depose and say:

I am a(n) **Special Agent with the FBI** and have reason to believe that on the person of or on the property or premises known as (name, description and/or location):

See Attachment "A", attached hereto and incorporated by reference herein,

in the District of **Oregon** there is now concealed a certain person or property, namely (describe the person or property to be seized):

See Attachment "B", attached hereto and incorporated by reference herein,

which is:

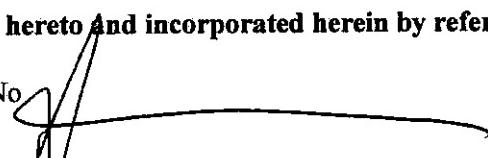
fruits, evidence, and instrumentalities of crimes against the United States,

concerning a violation of Title **18** United States code, Section(s) **1111 and 1153**. The facts to support a finding of Probable Cause are as follows:

See affidavit of Special Agent Leonard Opanashuk, attached hereto and incorporated herein by reference.

Continued on the attached sheet and made a part hereof. Yes

No



Leonard Opanashuk
Special Agent, FBI

Sworn to before me, and subscribed in my presence August 15, 2008 at Portland, Oregon
Date _____

Paul Papak, United States Magistrate Judge
Name and Title of Judicial Officer



City and State _____
Signature of Judicial Officer

STATE OF OREGON)
) ss.
In the County of Multnomah)

**AFFIDAVIT IN SUPPORT OF
SEARCH WARRANT**

I, Leonard Opanashuk, being duly sworn, depose and state as follows:

My Background

1. I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and have been so employed for over seven years. I am currently stationed at the Portland, Oregon FBI Office, where I am assigned to investigate violent crimes, such as Murder, and other violations of federal law.

2. This affidavit is submitted in support of a search warrant for the premises located at 1703 Foster Street, on the Warm Springs Indian Reservation, within the District of Oregon, 97761, which is the residence of Windy N. Harvey, for evidence of violations of Title 18, United States Code, Sections 1111 (Murder in the Second Degree) and 1153 (Offenses committed within Indian Country). Based upon the information summarized in this application, I have reason to believe that evidence of such violations is currently located on the premises.

3. I have personally reviewed reports and have spoken with other investigators who have been involved in this investigation, including SA Clayton Smith (a 20 year veteran of the FBI), Supervisory SA Stan Suenaga of the FBI Bend Resident Agency office, as well as members of the Portland FBI Evidence Response Team, who are all involved in a joint investigation with the Warm Springs Tribal Police Department involving the shooting death of Warren D.

Wallulatum Jr. by Windy N. Harvey, which occurred on the Warm Springs Indian Reservation.

As a result, I have become aware of the following:

4. On August 15, 2008, at approximately 12:39 a.m., the Warm Springs Police Officer Carl Tewee Sr. responded to a complaint concerning a shooting at the residence of 1797 Tao Shuh Street, on the Warm Springs Indian Reservation, within the District of Oregon. Upon arrival at the residence, Officer Tewee and Detectives determined that Warren Wallulatum was deceased at the scene and he had two gunshot wounds, one to the head and one to the chest.

5. On August 15, 2008, Detective Gary Samuel and Special Agent (SA) Clayton Smith interviewed witness Julie Stywer and she provided the following information: Stywer indicated that during the late evening of August 14, 2008, she was outside the residence at 1796A Tao Shuh Street, Warm Springs, Oregon, when she saw Warren Wallulatum and Levi Last Name Unknown (LNU) walk by the street and they asked her if she would like to "kick it" (party) with them at the home at 1797 Tao Shuh Street and she agreed.

6. When Julie Stywer arrived at the residence of 1797 Tao Shuh, the following individuals were inside the residence, herself, Windy Harvey, Wamblee Wallulatum, Warren Wallulatum, and Levi LNU. Once the party began, Levi LNU and Warren Wallulatum sat on a couch in the living room, that was adjacent to a television and faced towards the front of the house and viewed the front picture window. Directly behind the

couch was the dining area. Windy Harvey sat on a wood stool in the living room in front of the picture window and faced directly across from Warren Wallulatum on the couch. Julia Stywer and Wamblee Wallulatum sat on a second couch in front of the picture window and was next to the stool that Windy Harvey sat on. The second couch faced towards Warren Wallulatum and had views of the dining area and a wood stove sitting on a brick hearth.

7. Julie Stywer indicated that Warren Wallulatum and Windy Harvey had been drinking alcohol and may have been playing video games on the television. Julie Stywer recalled that Warren Wallulatum and Windy Harvey began to argue about a girlfriend that they both dated named Rolanda Williams, also known as Ippy. Julie Stywer could not recall what the argument was about; however, it lasted for only a short time period.

8. According to Julie Stywer, shortly after the argument started, Windy Harvey, pulled a black pistol from his pants, point the gun at Warren Wallulatum and fire two or three rounds directly at him while he was sitting on the couch. After being hit by the bullets, Warren Wallulatum fell off the couch and collapsed onto the living room floor. Immediately after the shooting, Windy Harvey ran out of the front door of the house.

9. Detective Gary Samuel showed Julie Stywer a photograph of an Indian Male and she identified the person in the photo as Windy Harvey, the person that she saw shoot Warren Wallulatum.

10. On August 15, 2008, Detective Gary Samuel interviewed witness Wamblee Wallulatum and he provided the following information: Wamblee advised that on or about August 14, 2008, he, Warren Wallulatum, Levi Jim, Windy Harvey, and a 19 year old woman were in the living room of a residence at 1797 Tao Shuh, on the Warm Springs Indian Reservation, within the District of Oregon. Warren Wallulatum and Windy Harvey had been drinking a few beers, named Hurricane, and they were sitting near the television in the living room. Windy Harvey was sitting on a chair across from Warren Wallulatum, who was sitting on a couch. They were facing each other and approximately six feet from each other.

11. According to Wamblee Wallulatum, Windy Harvey and Warren Wallulatum began to argue about a girl. He recalled that Warren Wallulatum told Windy Harvey, "Get the gun out of my face." Wamblee Wallulatum said that Windy Harvey had a black pistol and he started pulling the trigger and there were two fast shots. Wamblee Wallulatum said that Warren Wallulatum was shot while he was sitting on the couch and he tried to get up and move toward Windy Harvey but he fell to the floor.

12. Wamblee Wallulatum stated that Windy Harvey pointed the pistol at him, Levy Jim and the 19 year old girl and said, "You better not narc off" and then he ran out of the residence through the front door.

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13. Detective Gary Samuel showed Wamblee Wallulatum a photograph of an Indian Male and he identified the person in the photo as Windy Harvey, the same person that he saw shoot Warren Wallulatum.

14. On August 15, 2008, Detective Gary Samuel obtain consent from the tenants of the resident at 1797 Tao Shuh, on the Warm Springs Indian Reservation, within the District of Oregon, to enter the residence to process the crime scene. Detectives Gary Samuel and Samuel Williams along with SA Clayton Smith processed the crime scene and found one .40 caliber shell casing on the top seat cushion of the second couch, which was adjacent to the wood stool that Windy Harvey sat on in the living room. A second .40 caliber shell casing was found on the brick hearth, which was directly in front of the second couch.

15. Windy N. Harvey is an American Indian and a member of the Warm Springs Indian Reservation with enrollment number 2984. Warren Wallulatum is also an American Indian and a member of the Warm Springs Indian Reservation with enrollment number 3054.

16. On August 15, 2008, Detective Gary Samuel was contacted by Alicia Adams and Gaylene Adams, who were cousins of Windy Harvey. Alicia Adams informed Detective Samuel that they were escorting Windy Harvey to the Warm Springs Police Department so he could turn himself in. Detective Samuel asked Alicia Adams where Windy Harvey's pistol was located and she reported that Windy Harvey told her

that he gave it to Gene Harvey Sr., his father. Gaylene Adams also told Detective Samuel that Windy Harvey said he gave his pistol to his dad, Gene Harvey Sr. Alicia Adams stated that Gene Harvey Sr. and Windy Harvey both reside at 1703 Foster Street, on the Warm Springs Indian Reservation, within the District of Oregon.

17. Detective Samuel and Detective Sam Williams contacted Gene Harvey Sr. and asked about the location of the pistol. When asked where the gun currently was, Gene Harvey Sr. said that the pistol was located at his sister's home, Bobbi Jim, who resided at 2383 Oitz Loop, on the Warm Springs Indian Reservation, within the District of Oregon. When the Detectives and Gene Harvey Sr. arrived at the Jim residence and asked the residents if the pistol was located in the home the residents made no effort to look for the gun and said they did not believe the gun was in the house.

18. Detectives asked Gene Harvey Sr. if he knew where the pistol was. Gene Harvey Sr. said that his son, Windy Harvey had come home around 1:00 A.M. and gave him a pistol. Gene Harvey Sr. said he took the gun from his son and put it into his (Gene Harvey Sr.'s) room. Gene Harvey Sr. said that he did not see the gun later this morning and he didn't think it was still there and that his son must have come back and taken it. The detectives asked Gene Harvey Sr., if he would mind going back to his house and look for the gun to make sure it wasn't there, and Gene Harvey Sr., said that wasn't a problem and he was willing to do it. Detectives Samuel, Detective Williams, and Gene Harvey Sr. returned to 1703 Foster Street, Warm Springs, Oregon, and the Gene Harvey then entered

his home for a time and then he came back and showed the detectives a Glock Pistol Box with the markings "22" on the side of the box and reported that the pistol box was from Windy Harvey's room. Gene Harvey Sr. offered the pistol box to the Detectives; however, they declined to take custody of it at the time and left it with Gene Harvey Sr.

19. I have been issued a Glick .40 caliber pistol by the FBI and the model number is also "22."

20. On August 15, 2008, SA Clayton Smith spoke to Warm Springs Officer Jason Schjoll about his contact with residents at 1703 Foster Street, Warm Springs, Oregon, during the month of July 2008. Officer Schjoll stated that in July 2008, he responded to a report of intoxicated juveniles at 1703 Foster Street, Warm Springs, Oregon.

21. Upon arriving at the residence, Gene Harvey Jr., who was the brother of Windy Harvey, appeared to be intoxicated and admitted he was caring for juveniles at the home. Gene Harvey Jr. gave consent to Officer Schjoll to search the residence. Upon entering one bedroom, Officer Schjoll saw, in plain view, a pistol holster, pistol magazines, one box of .40 caliber cartridges and a small safe. Gene Harvey Jr. told the Officer that the bedroom belong to his brother Windy Harvey.

22. I know based upon my training and experience that individuals who possess firearms also keep and maintain ammunition, cartridges, and magazines for their firearms. I also know that it is common for individuals who possess handguns to have holsters for

their gun, the original cases that the guns came in, and well as records documenting their ownership of the firearm. I also know that it is common for people to take pictures of their firearms as well as pictures of them holding and possessing their firearms. I also know that the handgun described by the witnesses was a black semi-automatic pistol that ejected shell casings.

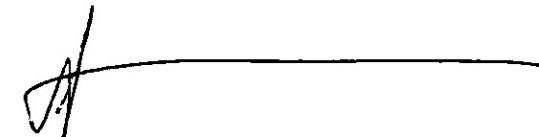
23. In summary, I have probable cause to believe, and I do believe, that the items described in Attachment B are currently located on the premises located at 1703 Foster Street, on the Warm Springs Indian Reservation, within the District of Oregon, 97761, and that such items constitute evidence, contraband, fruits, and instrumentalities of violations of Title 18, United States Code, Sections 1111 (Murder in the Second Degree) and 1153 (Offenses committed within Indian Country). I have reviewed the contents of this affidavit with Assistant United States Attorney Scott Kerin and he informed me that he also believes that probable cause exists to believe that the items described in Attachment B are currently located on the premises and that such items

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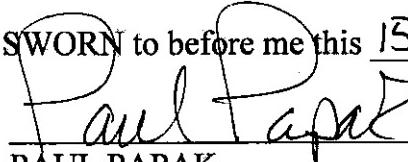
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constitute evidence, contraband, fruits, and instrumentalities of the crime of Murder in the Second Degree. I therefore respectfully request permission to search for, seize and search the evidence described in Attachment B for the reasons set forth in this affidavit.



Leonhard Opanashuk
Special Agent, FBI

SUBSCRIBED and SWORN to before me this 15th day of August 2008.


PAUL PAPAK

UNITED STATES MAGISTRATE JUDGE

Attachment A

Description of Location authorized for Search:
1703 Foster Street
Warm Springs Indian Reservation, District of Oregon 97761

The premises to be searched are described as 1703 Foster Street, on the Warm Springs Indian Reservation, within the District of Oregon, 97761. The premises consist of a one story home located on the east side Foster Street. The single story home consists of wood siding painted in a mustard color, a dark composite roof and a white front door with three rectangular windows, a large window on the top of the door, a medium sized window in the middle of the door and small window just above the door handle. There is a sign on the front of the home, adjacent to the front door with the address number 1703 in white numbers. Above the address marker with the number 1703, is the number 83, in black numbers. To the left of the front door is an abandoned beige refrigerator. On the left side of the home, the upper portion of the siding up to the peak of the roof is painted white.

Attachment B

Items to be searched for, seized and searched: evidence, contraband, fruits, and instrumentalities of violations of Title 18 United States Code, Sections 1111 (Murder in the second degree) and 1153 (Offenses committed within Indian Country) on the premises located at 1703 Foster Street, Warm Springs, Oregon 97761 including the following:

- A. A black .40 caliber pistol.
- B. .40 caliber cartridges
- C. Pistol magazines
- D. Holster for a pistol
- E. Glock Pistol case.
- F. Ownership records for a pistol.
- G. Pictures of Windy Harvey holding or possessing a handgun.
- H. Pictures of a handgun.